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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

MELANIE OCHS,

Case No.: 2:16-cv-00982-JCM-DJA

Petitioner,

ORDER

v.

JERRY HOWELL, et al.,

Respondents.

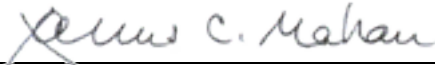
Petitioner Melanie Ochs sought a writ of habeas corpus under 28 U.S.C. § 2254 based, in part, on claims that the state district court used erroneous jury instructions. (ECF No. 18.) This court denied Ochs' petition but granted Ochs a certificate of appealability. (ECF No. 58.) Judgment was entered on September 21, 2021, and this case was closed. (ECF No. 59.) Ochs appealed, and the Ninth Circuit Court of Appeals reversed and remanded this case, finding that it had "grave doubt" whether the instructional error "had substantial and injurious effect or influence in determining the jury's verdict." (ECF No. 62.) As such, the Ninth Circuit Court of Appeals "reverse[d] and instruct[ed this court] to grant the writ unless Ochs is retried." (*Id.*) In accordance with the Ninth Circuit Court of Appeals' memorandum, this court grants the writ of habeas corpus.

IT IS THEREFORE ORDERED that Petitioner Melanie Ochs' writ of habeas corpus is **GRANTED**. The judgment of conviction filed on February 11, 2010, in case number C227324, in the Eighth Judicial District Court for the State of Nevada is **VACATED**. Petitioner Melanie Ochs shall be released from all custody and/or other restraints, including parole or other supervision, unless the state, through the respondents, files a written election in this matter within 30 days of

1 the date of this order of its intention to retry Ochs and thereafter commences jury selection in the
2 retrial within 120 days following the election to retry Ochs, subject to reasonable requests for
3 modification of the time periods.

4 IT IS FURTHER ORDERED that the Clerk of Court provide a copy of this order to the
5 Clerk of the Eighth Judicial District Court in connection with that court's case number C227324.

6 Dated: January 17, 2023

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8 JAMES C. MAHAN
UNITED STATES DISTRICT JUDGE